

NO. 49453-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

END PRISON INDUSTRIAL COMPLEX
Appellant/Plaintiff

v.

KING COUNTY
Respondent/Defendant

APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY
THE HONORABLE FRANK E. CUTHBERTSON

BRIEF OF RESPONDENT

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I. INTRODUCTION

In August 2012, King County voters authorized a nine year levy to build a new Children and Family Justice Center (CFJC), replacing the two existing King County juvenile court buildings and the current youth detention facility and adding a new parking garage on the site. Specifically, voters authorized “an additional property tax for nine years” at a first year rate of “\$0.07 per \$1,000 of assessed valuation” with “[i]ncreases in the following eight years subject to the limitations in chapter 84.55 RCW, all as provided in Ordinance 17304.” With this approval and direction from the voters, the County has levied the authorized taxes since 2013, contracted with a firm to design and build the CFJC replacement project, and applied for the necessary development permits from the City of Seattle.

Appellant End Industrial Prison Complex (EPIC) now belatedly opposes this voter-approved project. EPIC does not challenge the underlying legislation, King County Ordinance 17304, in any respect. Instead, EPIC’s sole challenge is to the summary of that legislation as it was presented in the ballot title. EPIC claims the ballot title did not comply with RCW 84.55.050 and that although voters were explicitly presented with a proposition for an additional property tax for nine years with increases in years two through nine at the statutory limit, what they

actually approved was a one year property tax with no increases in years two through nine. This interpretation is contrary to any reasonable reading of the statute and the ballot title presented to voters.

The trial court properly dismissed EPIC's lawsuit in its entirety on summary judgment for the following reasons:

1. It is untimely.

It is undisputed that EPIC's challenge is solely to the adequacy of the ballot title, not the legality of the underlying legislation. EPIC argues only that the ballot title did not adequately inform voters of the County's intent to adopt a nine year levy lid lift for this capital project. As the trial court held, this is a ballot title challenge. Under RCW 29A.36.090, it therefore had to be brought within ten days of the date the ballot title was filed with the King County Department of Elections (May 24, 2012). CP 478.

2. The ballot title complied with RCW 84.55.050.

Though the trial court ruled EPIC's lawsuit was an untimely ballot title challenge, the court nonetheless also found that the ballot title met the statutory requirements of RCW 84.55.050 as to the duration and purpose of the levy. CP 478.

As to the duration, the trial court recognized that there is more than one way to write a ballot title for a levy lid lift. The court rejected EPIC's

claim that RCW 84.55.050 mandates very specific “magic” words to describe years two through nine of the levy. In the case of the CFJC ballot title, the trial court found the nine year period of the levy was expressly stated in the ballot title in compliance with the statute.

The trial court also held that the ballot title adequately described the levy’s limited purpose in accordance with RCW 84.55.050(4)(c). CP 478. The CFJC ballot title met the requirement to give notice that would lead to an inquiry into the body of the act or indicate the scope and purpose of the law. The CFJC ballot title expressly told voters that levy proceeds would be used to fund capital costs for the CFJC replacement project and then directed them to the text of Ordinance 17304 for the project details. The trial court held that was sufficient.

EPIC is entitled to believe that construction of a new youth detention facility is flawed public policy. CP 3 (Complaint at 3, ln. 1: “Youth incarceration has been proved to be ineffective and counter-productive.”). EPIC may express its opinions and disagree with the County’s conclusions. However, the time for EPIC to make its arguments in opposition to the levy was in 2012 before the voters approved it. Ordinance 17304 was adopted through a public process of committee hearings, public testimony, and full county council vote at an open public meeting. The ordinance detailed the scope of the CFJC replacement

project, including construction of a new youth detention facility, and the funding plan for the nine year levy. The ordinance was available for public inspection at the county council clerk's office and on the County's website. If after viewing the ordinance EPIC's members wanted to see the ballot title, they could have requested it and it would have been provided to them. EPIC's claim, years after the vote, that many of its members had no knowledge of the project or levy at the time, (CP 4 (Complaint at 4, Ins 17-18)), does not excuse its failure to participate in the public legislative process or seek to amend the ballot title within the time prescribed by statute.

EPIC's challenge to the CFJC levy is untimely and without merit as a matter of law. The ballot title presented to voters five years ago complied with RCW 84.55.050 and the trial court properly dismissed this lawsuit. King County respectfully requests the trial court's order be affirmed.

II. ISSUES PRESENTED

1. Should the trial court's order of dismissal be upheld where EPIC's lawsuit is an untimely ballot title challenge under RCW 29A.36.090?

2. Should the trial court's order of dismissal be upheld where the CFJC ballot title expressly described a single year lid lift and a nine year levy in accordance with RCW 84.55.050?

3. Should the trial court's order of dismissal be upheld where the CFJC ballot title expressly described the limited purpose of the levy?

III. STATEMENT OF THE CASE

A. Ordinance 17304

Ordinance 17304 placed before voters at the August 2012 primary election a proposed property tax levy increase to fund the replacement of the existing juvenile court and youth detention facilities with a new Children and Family Justice Center on the same site in Seattle. CP 80-87, *see also*, Appendix A to this brief (Ordinance 17304).

The current facilities consist of courtrooms, administrative offices and youth detention facilities housed in three buildings: the Alder tower (courtrooms--constructed in 1972), the Alder wing (administrative offices--constructed in 1951, partially renovated in 1972), a youth detention facility (constructed in 1991) and associated parking. CP 90 (Council Staff Report).

Addressing the future of these facilities has been an on-going effort for over a decade and included a 2010 ballot measure that, had it been approved by voters, would have increased the sales tax in King County to

fund replacement of the Alder tower and Alder wing. CP 90-93 (Council Staff Report discussing history of planning efforts). Ordinance 17304 again proposed to replace the Alder tower and Alder wing, but also included replacing the youth detention facility and constructing a parking garage. CP 83.

1. The CFJC Replacement Project.

In describing the project scope and intended use of levy funds, Ordinance 17304 defined two key terms: “children and family justice center replacement project” and “capital costs.” The first term described the project elements, including but not limited to replacement of the detention facilities. The second term defined the costs for which taxes levied could be expended:

SECTION 2. Definitions...

A. “Children and family justice center replacement project” means a capital project or series of capital projects to design, remodel, construct and equip facilities for juvenile justice and family law services, including but not limited to replacement of the Alder wing, tower, detention facilities, and associated parking facilities located at the children and family justice center necessary to replace and expand the existing county facilities located at 12th and Alder in Seattle.

B. “Capital costs” includes the costs of architectural, engineering, legal and other consulting services, inspection and testing, administrative and relocation expenses, site improvement, demotion, on and off-site utilities, related improvements and other costs incurred incident to the design, remodeling, construction and equipping of the children and family justice center replacement project and its financing, including the incidental costs and costs related to the sale, issuance and delivery of the bonds. However,

“capital costs” shall not include the costs of maintenance or operations.

(Emphasis added.) CP 4.

2. The Proposed Property Tax Levy Lid Lift.

Ordinance 17304 proposed to fund the CFJC replacement project by asking voters to approve a nine year levy with a single-year (one-time) property tax lid lift. The ordinance also described the purpose of the tax increase (capital costs for the CFJC replacement project), and the proposed dollar rate of the increase (\$0.07 per one thousand dollars of assessed value):

SECTION 3. **Levy submittal.** To provide necessary funds for the capital costs for design, remodeling, construction and equipping of the children and family justice center replacement project, the county council shall submit to the qualified electors of the county a proposition authorizing a regular property tax levy in excess of the levy limitation contained in chapter 84.55 RCW for nine consecutive years, commencing in 2012, with collection beginning in 2013, at a rate in the first year not to [sic] \$0.07 per one thousand dollars of assessed value. In accordance with RCW 84.55.050, this levy shall be a regular property tax levy, subject to the statutory rate limit of RCW 84.52.043.

CP 4-5.

3. Adoption of Ordinance 17304.

The county council considered Ordinance 17304 in March and April of 2012. The proposed legislation was first referred to the budget and fiscal management committee, which held public hearings on March 20 and April 3. CP 226-231. Committee members were briefed at each

hearing by council staff and provided with information about the proposed project through written staff reports and oral testimony from committee staff and executive branch personnel. CP 89-204 (Council Staff Report); CP 206-216 (Revised Staff Report); CP 218-238 (Council Meeting Agendas). Committee staff reported a total proposed project cost of \$207.8 million, including \$16.2 million in contingency and \$3.3 million in project administration. Staff also reported an estimated cost of \$39 million to design and construct the new detention facility. CP 94.

Within the written materials presented, committee staff also included a detailed Facility Options Study prepared by the King County Facilities Management Division. The ninety-six page study analyzed five different development options, including the recommended approach of replacing all three juvenile justice buildings, constructing a new parking garage and selling the residual property. CP 101-197. The Facility Options Study specifically addressed the rationale for replacing the current juvenile detention facility, which included savings in maintenance, operations and staffing costs. CP 95-97.

On April 3, 2012 the committee referred Ordinance 17304 to the full council with a “Do Pass” recommendation. CP 233. After providing the requisite public notice and receiving testimony, the full council unanimously adopted the ordinance on April 16, 2012 and referred the

measure to the August 7, 2012 primary election ballot, where it was identified as Proposition No. 1. CP 80-87.

B. Ballot Title, Explanatory Statement and Resulting Vote

State law requires the prosecuting attorney to prepare the ballot title for a local government measure and file it with the county auditor. CP 72, *see also*, Appendix B to this brief (RCW 29A.36.071(1)). The description of the measure may not exceed seventy-five words. *Id.* In addition, for a one-time, multi-year levy lid lift, RCW 84.55.050(1) requires the ballot title to state the dollar rate proposed and to expressly state the conditions, if any, which are applicable under RCW 84.55.050(4). Such conditions include the period for which the increased levy is to be made and the levy's purpose.

On May 24, 2012, the King County Prosecuting Attorney filed the ballot title for Ordinance 17304 with King County Elections. CP 240-241. Nobody challenged the ballot title in superior court. As drafted and presented to voters, it stated in full:

Proposition No. 1
Children and Family Services Center Capital Levy

The King County council passed Ordinance 17304 concerning a replacement facility for juvenile justice and family law services. This proposition would authorize King County to levy an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families. It would authorize King County to levy an additional regular property tax of \$0.07 per

\$1,000 of assessed valuation for collection in 2013. Increases in the following eight years would be subject to the limitations in chapter 84.55 RCW, all as provided in Ordinance 17304. Should this proposition be:

- ☐ Approved
- ☐ Rejected

CP 243, *see also*, Appendix C to this brief (copy of voters' pamphlet page).

The prosecuting attorney also prepared an explanatory statement for the ballot measure to appear in the local voters' pamphlet for the August 12 primary election. RCW 29A.32.241 (county prosecuting attorney prepares explanatory statement for county measures). The explanatory statement read:

If approved by voters, Proposition 1 would authorize King County to levy an additional regular property tax to fund the capital costs of replacing and expanding the Children and Family Justice Center located at 12th Avenue and East Alder Street in Seattle. The levy would be authorized for a nine-year period with collection beginning in 2013. In the first year, the levy rate would be equal to or less than seven cents (\$0.07) per one thousand dollars (\$1,000) of assessed valuation on all taxable property within King County. Annual increases for collection years 2014 through 2021 would be governed by chapter 84.55 RCW, which limits the growth of the levy amount to 1% per year.

The Children and Family Justice Center Replacement Project includes a series of capital projects to design, remodel, construct, and equip facilities for juvenile justice and family law services. Capital projects include replacement of the Alder wing, Alder tower, detention facilities, and associated parking facilities. Levy funds may be used only for capital costs and incidental costs, including those related to the sale, issuance and delivery of

bonds. Levy funds may not be used for the costs of maintenance and operations of the facilities.

(Emphasis added.) CP 243.

The voters' pamphlet was mailed to all King County residences in the weeks before the election. It contained the full explanatory statement above and reprinted the text of Ordinance 17304 in its entirety. CP 283; 243; *see also*, Appendix C. (CFJC Levy Voters' Pamphlet Page).

In the weeks leading up to the primary election, editorials, opinion articles, and releases from community organizations variously supported and opposed the CFJC ballot measure. CP 245-260.

At the election a majority of participating voters, 55%, approved the measure, thereby authorizing the project. CP 262-267; *See* RCW 84.55.050(1) (levy must be approved by a majority of the voters of the taxing district voting on the proposition).

C. Calculating the CFJC Replacement Project Levy Lid Lift—2013 to the Present

1. The statutory framework.

As an initial matter, it is helpful to understand the statutory framework of the funding plan that King County voters approved in 2012. Under chapter 84.55 RCW, the annual growth of regular property tax levies is limited. For local taxing districts with a population of 10,000 or more, such as King County, the limit is 101% or 100% plus inflation,

whichever is less. RCW 84.55.005(2)(c). This restriction on property tax increases is called the “limit factor” and, as a practical matter, is 101% (or one percent). CP 279. When the limit factor is multiplied by the taxing district’s highest lawful regular property tax levy in the three most recent years and that amount is combined with an amount for new construction, the resulting amount is the district’s maximum allowable levy for that year, also referred to as the “levy lid.” RCW 84.55.010.

A levy lid lift is an exception to the one percent limit on annual growth. It allows a taxing district to “lift the lid” on its maximum allowable levy and collect an amount that exceeds the 101% limit factor. The lid lift must be authorized by a majority of the voters voting on the proposition and can be limited to a specific purpose and a specific length of time.

RCW 84.55.050 is the levy lid lift statute. CP 63-64; *see also*, Appendix D to this brief (copy of statute). It authorizes single and multiple year lid lifts. The terms “single” and “multiple” do not refer to the length of the levy itself. Instead, they refer to the number of years the district’s lid for property taxes will be lifted or “bumped up” above the 101% limit factor on an annual basis.

For a multiple year lid lift, the lid is lifted and the 101% limit factor is exceeded each year for up to six consecutive years. RCW

84.55.050(2)(a). Conversely, a single year lid lift raises the lid for only one year. RCW 84.55.050(1). However, as with the CFJC levy, a single year lid lift can still be a multiple year levy. In the first year, the lid is lifted with a higher limit factor (e.g., 104%, stated in terms of a dollar rate), but in the remaining years, the 101% limit is again applied, allowing increases only up to the statutory lid for the duration of the levy.

At the end of the final year, the levy lid for the first post-levy year is calculated as if the levy lid lift never occurred and as if the 101% limit factor had instead been applied each year to the taxing district's regular levy. RCW 84.55.050(5). The lone exception to this rule is where voters explicitly approve a permanent levy, allowing the levy amount in the last year of the levy to be used as the base for calculating the lid for subsequent levies. RCW 84.55.050(3), (4)(a), and (5).

2. The CFJC levy.

After certification of the August 2012 election results, King County incorporated the CFJC levy into its "Property Base System" (PBS) where property tax levy funds are calculated and tracked. CP 278. Based upon the ballot title, Ordinance 17304, and the explanatory statement, staff in the assessor's office annually calculate the levy amount, and submit it to the King County Council for approval as part of the following year's budget. CP 278-279.

For the first levy year, 2013, the CFJC ballot title specified a first year rate of \$0.07 per \$1,000 of assessed valuation, which assessor's office staff used to calculate the highest lawful levy amount. CP 279. The council levied just under that amount in 2013. CP 279.

For the second year, assessor's office staff again referred to the ballot title, explanatory statement, and the ordinance to determine the allowable increase in the levy was one percent.¹ CP 279-280. Therefore, for 2014, assessor's office staff applied the 101% limit factor to the previous year's levy amount and submitted it to the council for approval. The council approved, setting that amount at \$22,366,030. CP 280.

Again applying the 101% limit factor to the previous year's highest lawful levy amount, the council set the levy amount at \$23,080,793 for 2015, and \$23,821,948 for 2016. CP 280-281.

The final year of collection for the CFJC levy will be in 2021. Because the levy is temporary, for the County's property tax levy in 2022, the 101% limit factor will be applied to what would have been the County's highest lawful levy amount in 2021 had the CFJC levy lid lift

¹ As stated in the ballot title, the explanatory statement, and Ordinance 17304, the CFJC levy is a nine year levy. The ballot title provides that after the first year of the levy, "[i]ncreases in the following eight years would be subject to the limitations in chapter 84.55 RCW..." This language indicates that increases in each year of the levy after the first year would be subject to the statutory limit factor of 101%. CP 280.

never occurred. Unlike a permanent levy, the CFJC levy amount will not be used to calculate the County's subsequent levies. CP 281.

D. Procedural History

This lawsuit was filed in Pierce County Superior Court on April 27, 2016. On August 26, 2016, a hearing was held on the County's motion for summary judgment and EPIC's cross motion for partial summary judgment. The Honorable Frank E. Cuthbertson issued an order that same day finding that EPIC's lawsuit was an untimely ballot title challenge and that the CFJC ballot title met the requirements of RCW 84.55.050. The case was dismissed in its entirety with prejudice. EPIC timely filed this appeal.

IV. STANDARD OF REVIEW

An appellate court engages in the same inquiry as the trial court when reviewing an order of summary judgment. *Shoulberg v. Public Utility Dist. No. 1 of Jefferson County*, 169 Wash.App. 173, 177, 280 P.3d 491 (2012), *review denied*, 175 Wn.2d 1024 (2012). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). The court considers all facts and reasonable inferences in a light most favorable to the nonmoving

party, while all questions of law are reviewed de novo. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). The appellate court may sustain an order of summary judgment on any basis supported by the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-201, 770 P.2d 1027 (1989).

V. ARGUMENT

A. EPIC's claims are untimely as a matter of law.

The trial court found that EPIC's lawsuit was untimely and should have been brought as a ballot title challenge under RCW 29A.36.090. CP 477-479, *see also*, Appendix E to this brief (copy of statute). EPIC is not challenging the legality of Ordinance 17304 or the authority to use a levy lid lift to fund this capital project. In fact, EPIC does not challenge Ordinance 17304 at all, not in its description of the levy lid lift and not in its description of the scope of the project. Instead, EPIC's sole complaint is directed at the ballot title's summary of that legislation and whether it accurately describes the nine year levy and capital project proposed by the County in Ordinance 17304. This is a ballot title challenge.

1. State law sets the time period for bringing ballot title challenges; EPIC did not act within that period.

With RCW 29A.36.090, the Legislature provided citizens with an opportunity to challenge a ballot title that they believe to be objectionable, unfair, or otherwise improper. The statute makes this challenge process

available to “any persons” and directs that challenges be heard by the courts “without cost to either party.” CP 70.

The Legislature made it clear that proper timing for such a ballot title challenge is important. The statute limits the time period for filing a challenge to within ten days of the date the ballot title is filed with the county auditor.² RCW 29A.36.090.

The Legislature went further, also directing the superior court to “immediately” hear the challenge and to render its decision “as soon as possible.” The Legislature even precluded any opportunity for appeal, plainly stating that the superior court’s decision is final. *Id.* The Legislature was clear – if a citizen has a legal challenge to a ballot title, he or she must file it within 10 days and the court must promptly conclude the matter before the measure is presented to the voters.

Here, EPIC argues that the ballot title misled voters because it failed to inform them that the levy funds would be used for a limited purpose and that the levy was nine years in duration. EPIC does not allege that Ordinance 17304 was deficient in these respects, only that the ballot title was. Under EPIC’s legal theory, therefore, a discrepancy exists between the ballot title’s description of Ordinance 17304 and what

² In King County, the Director of the King County Department of Elections fulfills the duties of the county auditor as described in state law relating to the registration of voters and the conduct of elections. *See* King County Charter, §350.20.50 and RCW 29A.04.025.

Ordinance 17304 actually says. That is a ballot title challenge and EPIC was required to bring it within the RCW 29A.36.090 deadline.

Moreover, EPIC had multiple opportunities to learn about the CFJC levy, and to subsequently discover and legally challenge any such discrepancy before the statutory deadline. The King County Council adopted Ordinance 17304 through a six-week public process of hearings, public testimony, and a vote at an open public meeting. CP 218-238. Once adopted the ordinance was published on the County's website. The council also makes copies of its ordinances available upon request. Likewise, the ballot title was completed and available upon request as of May 24, 2012. CP 283; *see also* RCW 29A.36.080 (auditor to provide exact language of the ballot title upon request). Although EPIC now argues that its members did not know about the juvenile detention project or (alleged) impermissible levy, it is not because any part of the legislative process was hidden from view.

Because EPIC's challenge is to the ballot title not to the underlying legislation, this lawsuit, filed nearly five years after the statutory deadline expired, is untimely. EPIC could have raised its arguments within the required time period, but did not. It does not now get a second bite at the apple through post-election review.

2. The post-election challenge cases cited by EPIC are not applicable.

In its brief, EPIC relies on two cases to support its claim of timeliness. Appellant's Brief at 34. Neither applies here. While it is true that post-election challenges to a measure may be permitted, it is only where the challenge is to the legality of the legislation itself, not the sufficiency of the ballot title.

For example, EPIC relies on *Washington Association for Substance Abuse and Violence Prevention*, where the court allowed a post-election challenge to the constitutionality of an initiative deregulating the sale of liquor. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 278 P.3d 632 (2012). However, this case is not applicable because it did not involve a question of whether the ballot title accurately described what the initiative was intended to accomplish as EPIC argues here. Instead, the question was whether the legislation itself was constitutional. And the same is true for *City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006), also cited by EPIC. In *Malkasian*, the challenge was that the initiative approved by voters was beyond the scope of the initiative power, not that the ballot title improperly reflected the scope of the legislation or misinformed voters.

The same distinction applies to the other cases listed in the string cite at footnote 13 of EPIC's brief. Each post-election challenge case involves a challenge to the legality, in most cases the constitutionality, of the underlying law approved by the voters. See *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2001) (challenge to the constitutionality of state initiative limiting motor vehicle excise taxes); *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001) (challenge to constitutionality of initiative to nullify tax and fee increases).

In the present case, EPIC is not challenging the underlying legislation. EPIC does not assert that the County cannot propose a nine year property tax levy or that it cannot propose a capital project that includes a juvenile detention facility. EPIC's challenge is solely to the description of that legislation in the ballot title.³

EPIC's challenge is exactly the type of case courts should and actually do hear pre-election. EPIC argues the ballot title only authorized a one-year levy and did not properly inform voters of the scope of the

³ EPIC incorrectly equates a ballot title challenge under RCW 29A.36.090 with a constitutional challenge under article II, section 19 of the Washington Constitution. ("No bill shall embrace more than one subject, and that shall be expressed in the title.") Appellant's Brief at fn. 13. This type of constitutional challenge does not just concern the ballot title, it also concerns the underlying legislation. The purpose of the single subject clause is to prohibit the enactment of an unpopular provision pertaining to one subject by attaching it to a more popular provision whose subject is unrelated. *Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001). Certainly the court looks to the ballot title in this type of challenge, but the issue is the constitutionality of the underlying legislation, not the wording of the ballot title. With a ballot title challenge the dispute is with the ballot title only, not the underlying legislation.

capital project. If these allegations were true, the ballot title should be corrected before the election to ensure voters have the correct information about the measure on which they are being asked to vote. Allowing such a challenge after the election would put the courts in the position of overturning the will of the voters, not because the *legislation* suffers from a legal infirmity, but because the ballot title could have been better written. The strict timelines for ballot titles challenges protect against such a result.

As stated earlier, EPIC is free to disagree with the County's policy choices in proposing the CFJC levy. But a belated ballot title challenge is not a legal basis for overturning the will of the voters, who approved the CFJC levy almost five years ago. If there was a better way to have written the ballot title, EPIC should have made the argument then. The trial court's dismissal of this case in its entirety as untimely should be affirmed.

B. The ballot title met the requirements of RCW 84.55.050 as a matter of law.

In an attempt to avoid a finding of untimeliness, EPIC argues it is not attempting to *challenge* the CFJC ballot title rather, it is attempting to *enforce* the ballot title as presented to voters. The trial court did not agree, but nonetheless addressed the "enforcement" argument finding that the ballot did in fact meet the statutory requirements of RCW 84.55.050 as to

both the duration of the levy and the limited purpose.⁴ This court should affirm the trial court's conclusion.

1. The ballot title validly described the duration of the levy lid lift.

The CFJC levy is a nine year levy with a single year lid lift under RCW 84.55.050(1). It is not a multiple year lid lift under RCW 84.55.050(2) and it is not a permanent levy. Ordinance 17304 levy authorized the County to exceed the 101% limit factor only in the first year. In years two through nine of the levy, the statutory 101% is applied to the prior year's levy amount to set the maximum allowable levy (the "lid") for that year. While levy funds are still being collected in those years, they are within the statutory lid and thus no lid lift occurs in years two through nine. After year nine, the levy ends and County's subsequent levies will be calculated as if the CFJC levy lid lift never existed.

When the proposition was presented to voters, they approved an additional property tax for nine years that began in the first year and increased each year thereafter by the one percent limit. The ballot title stated:

⁴ At pages 4-5 of its brief, EPIC states that the trial court did not resolve the claims under RCW 84.55.050 because it found EPIC's lawsuit to be untimely. This is a clear misrepresentation of the trial court's order. In addition to finding EPIC's lawsuit untimely, the order states, "The ballot title met the statutory requirements of RCW 84.55.050." CP 478.

The King County council passed Ordinance 17304 concerning a replacement facility for juvenile justice and family law services. This proposition would authorize King County to levy an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families. It would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013. Increases in the following eight years would be subject to the limitations in chapter 84.55 RCW, all as provided in Ordinance 17304. Should this proposition be:

☐ Approved
☐ Rejected

(Emphasis added).

In arguing that the ballot title did not meet the requirements of RCW 84.55.050, EPIC asserts voters did not know that the increased property tax would be effective for nine years. In fact, EPIC asserts that voters believed the levy would *decrease* sharply after 2013. Appellant's Brief at 22.⁵ This assertion is unconvincing when held up to the ballot title which expressly provides for "an additional property tax for nine years" at a first year rate of \$0.07 per \$1,000 with "[i]ncreases in the following eight years."

⁵ It should be noted that the chart at page 22 of EPIC's brief does not even accurately represent the one-year levy that EPIC asserts was described in the ballot title. The graph shows the one-year levy lid lift in 2013, and in 2014 shows the levy dropping dramatically but still existing. For the remaining years, the graph shows the levy increasing at 101% each year. However, under EPIC's theory, there would be no levy at all in years two through nine because EPIC is arguing that the levy in those years must be calculated as if the CFJC never occurred. If it never occurred, there is nothing left to apply the limit factor to. So the "increase" in year two (2014) would be calculated by multiplying the limit factor (101%) by \$0. This results in a levy in 2013, but no levy at all in any of the eight years after. There is no reading of the ballot title that would suggest this result.

Moreover, it is based on a misinterpretation of the law. EPIC's position rests on the claim that RCW 84.55.050(3) and (4)(a) require very specific words to inform voters of how the levy would be calculated in future years. There is no such magic language required by RCW 84.55.050 for a ballot title. The statute does require that the conditions applicable to the levy lid lift be expressly stated in the ballot title, but the statute does not require the use of specific verbatim wording. The CFJC ballot title clearly told voters that it proposed an additional nine year property tax levy with *increases* in years two through nine. There is simply no reasonable reading of the ballot title language that would lead one to conclude that it proposed a one-year levy with *decreases* in the later years as EPIC claims.

Nevertheless, EPIC argues that because the ballot title did not include the words "base" or "computing limitations" when describing the levy's effect in years two through nine, the ballot title does not comply with RCW 84.55.050(3), (4)(a), and (5). That argument should be rejected. First of all, as stated above, there is nothing in the statute to indicate that there is only one way to "expressly state" how the future years of a levy will be calculated. Nor is there anything in the legislative history to indicate such a requirement was intended. Secondly,

jurisdictions all over the state propose and implement levy lid lifts without EPIC's purported mandatory language.

In August 2012, on the same ballot as the CFJC levy, the City of Seattle proposed a levy lid lift for Seattle Public Libraries with the following ballot title:

The City of Seattle's Proposition 1 concerns supporting, maintaining and improving core Library Services.

This proposition would increase library collections, support library hours and services, update technology and maintain library facilities, as provided in Ordinance No. 123851. It authorizes regular property taxes above RCW 84.55 limits, allowing additional 2013 collection of up to \$17,000,000 (approximately \$0.15/\$1,000 assessed value) and up to \$122,630,099 over seven years. In 2013, total City taxes collected would not exceed \$3.60 per \$1,000 of assessed value.

CP 466-470.

This is a ballot title written by the city attorney, not the county prosecutor. *See* RCW 29A.36.071 (city attorney prepares ballot titles for city measures). It does not refer to the "base" or to "computing" levies in later years, but it expressly tells voters that the levy is a seven-year levy over the RCW 84.55 limits with a first-year rate of \$0.15/\$1,000. Under EPIC's theory, this is a one-year levy with no increases in years two through seven – certainly not what the voters expected when they approved levy collection to occur "over seven years."

The Department of Revenue also does not interpret RCW 84.55.050 to require any particular words to meet the requirements of

RCW 84.55.050. The Department publishes a guide on the requirements for levy lid lift ballot titles. The sample ballot title for a lid lift with a specified time period, like the CFJC levy, is presented by the Department as follows:

(SAMPLE) County Hospital District No. (##)
Proposition No. (#)
Single Year Temporary Levy Lid Lift (with specific time period)

The Commissioners of (SAMPLE) Hospital District adopted Resolution No (#) concerning a proposition to increase its regular property tax levy. If approved, this proposition would authorize the District to set its 2010 regular property tax levy rate at (\$.##) per \$1,000 assessed value to fund health services. The newly established dollar limitation would remain in effect for a period of 10 years. Should this proposition be:

Approved / Rejected

CP 472.

This sample ballot title, published by the Department, does not specifically talk about the “base” or “computing” amounts for future years of the levy based on the first year’s dollar amount. However, it is clear that this is a levy where the lid will be lifted in the first year in accordance with the specified rate and the levy lid lift will remain in place in years two through ten, with the maximum levy amount in these years being calculated using the first year’s amount as the base.

As the above examples demonstrate, there is no one correct way to write a levy lid lift ballot title that complies with RCW 84.55.050. The

conditions that are applicable to the levy must be expressly stated to voters, but that can be done in a number of different ways. The City of Seattle does it one way, the Department of Revenue suggests another, and as EPIC demonstrated for the trial court, the City of DuPont has done it another way. CP 421. All of these ballot titles may be different, but they all comply with RCW 84.55.050.

EPIC next argues that because levy staff in the King County Assessor's Office reviewed not only the ballot title, but also the explanatory statement and Ordinance 17304 when they processed the CFJC levy, the ballot title must have been unclear. Appellant's Brief at 15. It is difficult to imagine why assessor's office staff wouldn't review all three documents when processing the levy since they all concern the levy before them and one, the ordinance, was expressly identified in the ballot title. Regardless, what assessor's office staff reviewed has no bearing on whether the ballot title met the requirements of RCW 84.55.050. The ballot title either meets the requirements or it does not – that is a question for the court to decide as a matter of law.

Lastly, EPIC cites the proposed ballot title in the body of Ordinance 17304, which stated that the 2013 levy amount would serve as the base for computing future increases during the levy's remaining years (CP 85), as support for its interpretation of the statute. What EPIC fails to

mention is that the word count in the sample ballot title was in excess of the word limits allowed by RCW 29A.36.071(1) and the ordinance expressly said the sample was subject to “such additions, deletions or modifications as may be required ... by the prosecuting attorney.” CP 85 (Ordinance 17304 at 6, Ins 111-113).

In sum, the CFJC ballot title contained an express statement to voters that this would be a nine year additional property tax levy that would increase in years two through nine by the statutory limit factor. It is unreasonable to suggest voters interpreted the ballot proposition to mean anything else, especially a one-year levy with *decreases* in later years, as EPIC suggests. The statutory requirements were met.

2. The purpose of the CFJC levy was expressly stated.

EPIC also argues that the limited purpose for the levy funds was not expressly stated in the ballot title as required by RCW 84.55.050(4)(c) and that the levy funds are not limited purpose funds, but are “general revenue” and can be used by the County “for any purpose.” Appellant’s brief at 28. This argument is contrary to the clear language of the ballot title and, as with the requirements for the levy duration discussed above, EPIC’s argument regarding the purpose is based on reading a specificity requirement into the statute that does not exist.

RCW 29A.36.071 strictly limits the “concise description” in a ballot title to seventy-five words. In these seventy-five words, the ballot title must not only tell voters about the project, but it must also describe the proposed levy as discussed above. Though the purpose for the proposed levy was not described in detail, it was expressly stated in the ballot title as a levy “to fund capital costs to replace the Children and Family Justice Center, which serves the needs of children and families.”

Describing the project in this shorter form was necessary and appropriate. There is simply not enough room in the ballot title to describe the details of what is being replaced and what it is being replaced with. However, contrary to EPIC’s arguments, the information was not hidden and voters were not misled. The details of the project were set out in Ordinance 17304 which was explicitly referenced in the ballot title.

The ordinance described the project as follows:

The children and family justice center replacement project will replace and expand the Alder Tower, Alder Wing, detention facilities and associated parking facilities of the existing facility located at 12th and Alder in Seattle.

CP 84.

There are many ways the project could have been described and had EPIC timely made a ballot title challenge, a court might have agreed that EPIC had a better one. But the ballot title expressly stated that the

purpose for the levy was to replace and expand the existing facility. The voters approved the measure and, as discussed below, it is clear from the information presented to voters that the funds were going to be used for a limited purpose.

3. The ballot title must satisfy the statute, but the ordinance and explanatory statement are certainly relevant to the voters and the court.

There is no dispute that the statutory requirements for a ballot title must be met by the ballot title itself. But EPIC asserts that the enacting ordinance and the explanatory statement should be disregarded and that a court should assume voters did not look at either document. This position is contrary to law.

RCW 29.36.071(1) references RCW 29A.72.050 and the form of the sample ballot titles listed therein. CP 474-476. Each of those titles specifically lists the ballot measure's enacting legislation so that interested voters can review the details of the project. The Washington Supreme Court has long recognized that a ballot title cannot be an index of all the contents of a measure, but instead must only give notice which would lead to an inquiry into the body of the act or indicate the scope and purpose of the law. *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 85 P.3d 346 (2004) (citing *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995)). The CFJC ballot title did that.

The issue in *Sane Transit* was whether the ballot title approved by voters for a regional rail and express bus system allowed for a scaled back light rail line from what was planned at the time the ballot measure was approved. The court rejected Sane Transit's argument that the case should be resolved based on the ballot title alone. Instead, the court looked to the voters' pamphlet, the text of the enacting legislation, and an eight-page pamphlet mailed to voters by Sound Transit – notably, the latter two sources were expressly identified in the ballot title. The court decided the case based on all this information presented to voters and found that Sound Transit did have the authority to scale back the project. That authority was not expressly stated in the ballot title, but the court found voters approved the project as it was described in the voters' pamphlet, enacting legislation, and the eight-page pamphlet.

Not every detail of the CFJC project is listed in the ballot title. There is no way they could be. Recognizing this fact, the Legislature requires that more information about every measure be readily available to the voters. In this case, the voters' pamphlet with the CFJC explanatory statement and Ordinance 17304, the latter also being expressly identified in the ballot title, was mailed to every residence in King County. Contrary to EPIC's assertions, this court should not assume that voters did not read these materials. *City of Spokane v. Taxpayers of City of Spokane*, 111

Wn.2d 91, 97, 758 P.2d 480 (1988) (court will not assume voters do not read or understand the measure presented to them).

The details of the project were provided to voters in these materials and they specifically stated the levy funds would be used for a limited purpose and that limited purpose was described in detail. EPIC's assertion that the voters could not have known the funds would be used for this purpose and instead authorized the County to use the funds for *any* general purpose is not credible.

VI. CONCLUSION

The voters approved the CFJC levy nearly five years ago and since that time the County has taken the steps necessary to implement the project. EPIC is entitled to oppose the project and publicly criticize the project but it is not entitled to delay and hinder the project and overturn the will of the voters. For the reasons set forth above, King County respectfully requests that the trial court's order dismissing this matter in its entirety be upheld.

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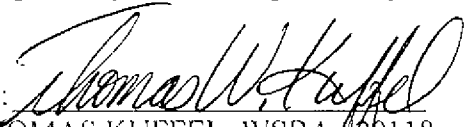
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DATED this 17th day of March, 2017.

Respectfully submitted.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

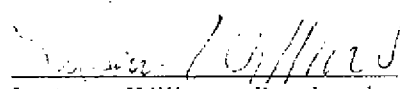
By: 
THOMAS KUFFEL, WSBA #20118
Senior Deputy Prosecuting Attorney
JANINE JOLY, WSBA #27344
Senior Deputy Prosecuting Attorney
Attorneys for King County
500 Fourth Avenue, Suite 900
Seattle, WA 98104
Telephone: (206) 296-0430

DECLARATION OF SERVICE

I, LuAnna Willnow, hereby declare under penalty of perjury under the laws of the State of Washington that on March 17, 2017, I caused the foregoing to be filed with the Court of Appeals, Division II and a true and correct copy of the same to be sent via email, per agreement of counsel, to the following:

Knoll D. Lowney
Alyssa L. Englebrecht
Smith & Lowney, PLLC
2317 East John St.
Seattle, WA 98112-5412
Email: knoll@igc.org
alyssae@igc.org
jessie.c.sherwood@gmail.com

SIGNED THIS 17TH day of March, 2017, at Seattle, Washington.


LuAnna Willnow, Paralegal

Appendix A



KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 16, 2012

Ordinance 17304

Proposed No. 2012-0094.2

**Sponsors Ferguson, Lambert, Gossett,
McDermott and Phillips**

1 AN ORDINANCE providing for the submission to the
2 qualified electors of King County at a special election to be
3 held in King County on August 7, 2012, of a proposition
4 authorizing a property tax levy in excess of the levy
5 limitation contained in chapter 84.55 RCW for a
6 consecutive nine year period at first year rate of not more
7 than \$0.07 per one thousand dollars of assessed valuation,
8 to fund capital costs of replacing the children and family
9 justice center located at 12th Avenue and East Alder Street
10 in Seattle.

11 **SECTION 1. Findings:**

12 A. Public safety is a fundamental purpose of government.

13 B. A strong criminal justice system is necessary to maintain safe and livable
14 communities.

15 C. Under Washington state law, counties provide many regional and local
16 criminal justice functions, including police protection, the incarceration of offenders,
17 court services, and the prosecution and defense services of defendants.

18 D. The children and family justice center ("CFJC") facility at 12th Avenue and
19 East Alder Street in downtown Seattle serves the justice needs of King County youth and
20 families.

21 E. The CFJC is in a state of disrepair and has reached the end of its useful life.
22 The costs of maintaining the buildings have become untenable with over twenty million
23 dollars in needed maintenance costs alone. The facility is in need of replacement to
24 ensure the continuing justice services for King County children and families and to meet
25 the demands of population growth in future years.

26 F. The superior court has undertaken long range planning efforts for the provision
27 of juvenile and family justice services and has completed both a Targeted Operational
28 Master Plan ("TOMP") and a Targeted Facilities Master Plan ("TFMP") which
29 recommended replacement of the CFJC and improvements to the facilities to meet future
30 demand.

31 G. Planning efforts have also determined that replacement of the detention
32 facilities with a modern design will allow the county to optimize operations to reduce
33 operational costs and avoid necessary major maintenance expenses on the existing
34 facilities. Additionally, relocating the placement of detention facilities on the site will
35 maximize the residual value of the remaining land.

36 H. Current funding for criminal justice is limited and insufficient to provide King
37 County residents with the level of services needed to build and maintain safe and strong
38 communities and to all make the necessary updates to criminal justice capital facilities,
39 including the CFJC.

40 I. To counter this shortfall and a general lack of funding for county government,
41 King County has aggressively worked to reduce expenditures by consolidating
42 departments and functions, reducing labor costs and eliminating positions and programs.

43 J. To save taxpayer dollars and have the greatest possible impact on those in
44 need, King County makes substantial investments in prevention and intervention efforts
45 that reduce criminal justice involvement and costs, including job readiness, employment
46 services and ending homelessness, in conjunction with funding traditional criminal
47 justice services.

48 K. To contain costs and bring growth in revenues and expenditures into
49 equilibrium, King County has continued to find efficiencies and capitalize on
50 productivity gains through the better use of technology, better program management and
51 performance measurement.

52 L. King County has also worked to obtain additional revenue tools from the state
53 Legislature to offset the structural funding problem facing King and all other Washington
54 state counties. However, these changes have not been sufficient to solve the county's
55 projected revenue shortfalls.

56 M. The county's projected future deficits threaten important criminal justice and
57 other essential government functions.

58 N. The county council hereby finds that essential public health and safety
59 services provided by the CFJC are of general benefit to all of the residents of King
60 County. To maintain King County's ability to continue to provide services at a facility on
61 the current site of the CJFC, the county council finds that the best interests of all of the

62 residents of the county require the county to undertake a replacement project for the
63 facility.

64 O. The county council further finds that it is appropriate to ask the voters to fund
65 the replacement of this essential criminal justice facility through a nine-year \$0.07
66 property tax levy.

67 **SECTION 2. Definitions.** The definitions in this section apply throughout this
68 ordinance unless the context clearly require otherwise.

69 A. "Children and family justice center replacement project" means a capital
70 project or series of capital projects to design, remodel, construct and equip facilities for
71 juvenile justice and family law services, including but not limited to replacement of the
72 Alder wing, tower, detention facilities, and associated parking facilities located at the
73 children and family justice center necessary to replace and expand the existing county
74 facilities located at 12th and Alder in Seattle.

75 B. "Capital costs" includes the costs of architectural, engineering, legal and other
76 consulting services, inspection and testing, administrative and relocation expenses, site
77 improvement, demolition, on and off-site utilities, related improvements and other costs
78 incurred incident to the design, remodeling, construction and equipping of the children
79 and family justice center replacement project and its financing, including the incidental
80 costs and costs related to the sale, issuance and delivery of the bonds. However, "capital
81 costs" shall not include the costs of maintenance or operations.

82 **SECTION 3. Levy submittal.** To provide necessary funds for the capital costs
83 for design, remodeling, construction and equipping of the children and family justice
84 center replacement project, the county council shall submit to the qualified electors of the

85 county a proposition authorizing a regular property tax levy in excess of the levy
86 limitation contained in chapter 84.55 RCW for nine consecutive years, commencing in
87 2012, with collection beginning in 2013, at a rate in the first year not to \$0.07 per one
88 thousand dollars of assessed value. In accordance with RCW 84.55.050, this levy shall
89 be a regular property tax levy, subject to the statutory rate limit of RCW 84.52.043

90 **SECTION 4. Project description.**

91 A. The children and family justice center replacement project will replace and
92 expand of the Alder Tower, Alder Wing, detention facilities and associated parking
93 facilities of the existing facility located at 12th and Alder in Seattle. The exact project
94 specifications shall be determined by the county council.

95 B. The council estimates that the capital costs of design, remodeling, construction
96 and equipping of the children and family justice center replacement project will be in the
97 range of two hundred to two hundred ten million dollars.

98 **SECTION 5. Deposit of levy proceeds.** If approved by the voters, the levy
99 proceeds shall be deposited in a first tier fund that shall be established by the council
100 upon voter approval of the ballot measure. Proceeds from the fund shall be used solely
101 for any eligible purpose identified in section 6 of this ordinance.

102 **SECTION 6. Eligible expenditures.** If approved by the qualified electors of the
103 county, the levy proceeds shall be used only for capital costs for the children and family
104 justice center replacement project.

105 **SECTION 7. Call for special election.** In accordance with RCW 29A.04.321,
106 the King County council hereby calls for a special election to be held in conjunction with
107 the general election on August 7, 2012. The director of elections shall cause notice to be

given of this ordinance in accordance with the state constitution and general law and to submit to the qualified electors of the county, at the said special county election, the proposition hereinafter set forth. The clerk of the council shall certify that proposition to the director of elections, in substantially the following form, with such additions, deletions or modifications as may be required for the proposition listed below by the prosecuting attorney:

PROPOSITION ____: The King County council has passed Ordinance _____ concerning funding for a replacement facility for the Children and Family Justice Center. This proposition would authorize King County to levy an additional property tax to provide funding for capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families. It would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013. The 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years, all as provided in Ordinance _____. Should this proposition be:

Approved? _____

Rejected? _____

SECTION 8. Energy efficiency.

A. If the proposition in section 6 of this ordinance is approved by the voters, then, before requesting construction funds, the executive will submit to the council a

130 report on alternatives for heating and cooling the new facility. The report shall contain,
131 at a minimum:

- 132 1. Options for heating and cooling the building;
- 133 2. A discussion of the operating, maintenance and equipment replacement costs
134 for the various options;
- 135 3. A discussion of the greenhouse gas contributions of the various options;
- 136 4. A discussion of how each option achieves the goals established by the Seattle
137 2030 district, of which king county is a participating member;
- 138 5. A discussion of any approved city of Seattle district energy project that might
139 encompass the children and family justice center.

140 B. The executive must transmit the report required to be submitted by this section
141 in the form of a paper original and an electronic copy with the clerk of the council, who
142 shall retain the original and provide an electronic copy to all councilmembers, the council
143 chief of staff and the lead staff for the budget and fiscal management committee or its
144 successor.

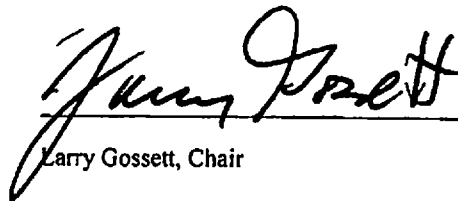
145 **SECTION 9. Severability.** If any one or more of the provisions of this ordinance
146 shall be declared unconstitutional or invalid for any reason, such decision shall not affect
147 the validity of the remaining provisions of this ordinance, the bonds or any short-term
148 obligations issued in anticipation thereof, and this ordinance, the bonds and any short-

149 term obligations issued in anticipation thereof shall be construed and enforced as if such
150 unconstitutional or invalid provisions had not been contained herein.
151

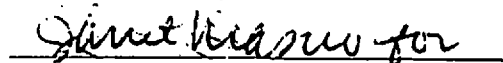
Ordinance 17304 was introduced on 3/5/2012 and passed by the Metropolitan King
County Council on 4/16/2012, by the following vote:

Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Mr. Ferguson, Mr. Dunn and Mr. McDermott
No: 0
Excused: 1 - Ms. Lambert

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Norris, Clerk of the Council

RECEIVED
2012 APR 26 PM 4: 02
CLERK
KING COUNTY COUNCIL

APPROVED this 26 day of APRIL, 2012.


Dow Constantine, County Executive

Attachments: None

Appendix B

RCW 29a.36.071**Local measures—Ballot title—Formulation—Advertising.**

(1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must not exceed seventy-five words; however, a concise description submitted on behalf of a proposed or existing regional transportation investment district may exceed seventy-five words. If the local governmental unit is a city or a town, or if the ballot title is for a referendum under RCW 35.13A.115, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.

[2015 c 172 § 3; 2006 c 311 § 9; 2004 c 271 § 169.]

NOTES:

Findings—2006 c 311: See note following RCW 36.120.020.

Appendix C

10 King County

Proposition No. 1 Children and Family Services Center Capital Levy

The King County council passed Ordinance No. 17304 concerning a replacement facility for juvenile justice and family law services. This proposition would authorize King County to levy an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families. It would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013. Increases in the following eight years would be subject to the limitations in chapter 84.55 RCW, all as provided in Ordinance No. 17304. Should this proposition be:

- ☐ Approved
☐ Rejected

The complete text of this measure is available beginning on page 85.

Statement in favor

Vote YES on Prop 1: YES FOR CHILDREN AND FAMILIES

The Children and Family Justice Center ("CFJC") is where children and families go in times of crisis: child abuse and neglect; foster care transition; complex custody issues; juvenile offenses and truancy cases.

A growing population and economic difficulties mean more kids and families need care and protection, but current facilities are dangerously outdated and failing our children. Brown water flows from drinking fountains, entire sections are unusable, and electrical, plumbing, and HVAC systems are beyond repair. Financial reviews state that replacement—not temporary fixes—is the least expensive long-term solution.

Despite decrepit conditions, our court is leading in innovations for juvenile and family justice. The new CFJC will better serve families and child advocates by co-locating services like medical treatment, counseling, and placement. The new design will improve safety, privacy and dignity. Combining services will save millions in duplicative service providers and offices.

We cannot wait any longer. For less than \$25/year for an average household—less than 50¢/week—we can give hope to at risk kids and families. A unanimous County Council, Dow Constantine, the Kent and Auburn Mayors, and Bellevue Reporter agree - vote YES on Prop 1.

Rebuttal of statement in opposition

All nine members of the non-partisan King County Council voted unanimously to send Prop. 1 to the voters. Public Safety and protecting kids are NOT partisan issues. A new building will end wasteful repairs and provide efficient, compassionate service delivery—saving money and lives. Children and families in King County deserve our support. Join with Prosecutor Dan Satterburg, Presiding Judge Richard McDermott, former Justice Bobbe Bridge and many more and VOTE YES for Prop. 1.

Statement submitted by: John McKay, Bobbe J. Bridge, and Estella Ortega

King County Elections is not responsible for the validity or accuracy of the statements, arguments or rebuttals.

Explanatory statement

If approved by voters, Proposition 1 would authorize King County to levy an additional regular property tax to fund the capital costs of replacing and expanding the Children and Family Justice Center located at 12th Avenue and East Alder Street in Seattle. The levy would be authorized for a nine-year period with collection beginning in 2013. In the first year, the levy rate would be equal to or less than seven cents (\$0.07) per one thousand dollars (\$1,000) of assessed valuation on all taxable property within King County. Annual increases for collection years 2014 through 2021 would be governed by chapter 84.55 RCW, which limits the growth of the levy amount to 1% per year.

The Children and Family Justice Center Replacement Project includes a series of capital projects to design, remodel, construct, and equip facilities for juvenile justice and family law services. Capital projects include replacement of the Alder wing, Alder tower, detention facilities, and associated parking facilities. Levy funds may be used only for capital costs and incidental costs, including those related to the sale, issuance and delivery of bonds. Levy funds may not be used for the costs of maintenance and operations of the facilities.

Statement in opposition

Anyone aspiring to become a homeowner should consider whether property taxes now are so high that such ownership is problematic. The King County Council nevertheless believes it needs more, not less, revenue during difficult economic times and this request is its latest salvo in class warfare waged for the benefit of renters and the homeless, demographics relatively unaffected by property tax increases. Again, the Council has declined to propose a sales tax increase, opting instead for the property tax increase it's confident will pass because homeowners constitute less than half of registered voters. Further, since the Council is indebted to public service unions for the support which re-elects its members, there's been no action to reassign any governmental service to the private sector where it might be delivered more economically.

Rebuttal of statement in favor

Many homeowners already are struggling to meet financial obligations and don't need another property tax increase but the Council is saying "yes" to public employee unions and "no" to property tax relief. Don't be fooled: if the Council privatized some services now provided by county government, revenue for capital improvements would be available. If voters continue approving these levies, there'll be more spending initiatives and more Council demands for additional revenue to fund them.

Statement submitted by: John H. Shackleford

Appendix D

RCW 84.55.050**Election to authorize increase in regular property tax levy—Limited propositions—Procedure.**

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.

(2)(a) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the limited purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used.

(b)(i) Except as otherwise provided in this subsection (2)(b), funds raised by a levy under this subsection may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar years 2009, 2010, and 2011, in any county with a population of one million five hundred thousand or more. This subsection (2)(b)(ii) only applies to levies approved by the voters after July 26, 2009.

(iii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar year 2009 and thereafter in any county with a population less than one million five hundred thousand. This subsection (2)(b)(iii) only applies to levies approved by the voters after July 26, 2009.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.

(4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Use the dollar amount of a levy under subsection (1) of this section, or the dollar amount of the final levy under subsection (2) of this section, for the purpose of computing the limitations for subsequent levies provided for in this chapter;

(b) Limit the period for which the increased levy is to be made under (a) of this subsection;

(c) Limit the purpose for which the increased levy is to be made under (a) of this subsection, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

(d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or

(e) Include any combination of the conditions in this subsection.

(5) Except as otherwise expressly stated in an approved ballot measure under this section, subsequent levies shall be computed as if:

(a) The proposition under this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the proposition.

[2009 c 551 § 3; 2008 c 319 § 1; 2007 c 380 § 2; 2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

NOTES:

Application—2008 c 319: "This act applies prospectively only to levy lid lift ballot propositions under RCW 84.55.050 that receive voter approval on or after April 1, 2008." [2008 c 319 § 2.]

Effective date—2008 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 319 § 3.]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW 82.14.450.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Appendix E

RCW 29A.36.090**Local measures—Ballot title—Appeal.**

If any persons are dissatisfied with the ballot title for a local ballot measure that was formulated by the city attorney or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title, not including Saturdays, Sundays, and legal holidays, appeal to the superior court of the county where the question is to appear on the ballot, by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of it. The time of the filing of the ballot title, as used in this section in determining the time for appeal, is the time the ballot title is first filed with the county auditor.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the county auditor and the official preparing the ballot title. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the county auditor a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title or statement so certified will be the established ballot title. The appeal must be heard without cost to either party.

[2003 c 111 § 909. Prior: 2000 c 197 § 14; 1993 c 256 § 12; 1965 c 9 § 29.27.067; prior: 1953 c 242 § 4. Formerly RCW 29.27.067.]

NOTES:

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

KING COUNTY PROSECUTOR
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